

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF)	OAH No. 10-0139-CSS
R. L. W.)	CSSD No. 001160577
)	
_____)	

DECISION AND ORDER

I. Introduction

On April 15, 2010, a formal hearing was held to consider the child support obligation of R. L. W. (Obligor) for the support of his child, D. (Obligee).¹ The custodial parent, F. W., participated. Mr. W. also participated. Erinn Brian, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed at the end of the hearing.

This case is Mr. W.'s appeal of the Division's order establishing his child support obligation for his child, D. Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concludes that the amounts set in the Division's Amended Administrative Child and Medical Support Order should be affirmed.

II. Facts

Ms. W. and Mr. W.'s child, D., was born on March 25, 1993. Ms. W. and Mr. W. were married, and both were living together with D. in Alaska before they separated. Ms. W. applied for the Division's services for D., in July of 2009. Paternity is not in dispute. Mr. W. was named as D.'s father on his birth certificate.²

The Division served Mr. W. with an Administrative Child and Medical Support Order on December 17, 2009.³ Mr. W. requested an administrative review.⁴

The Division issued an Amended Administrative Child and Medical Support Order on February 16, 2010. The Division set Mr. W.'s ongoing child support at \$454 per month. The

¹ The hearing was held under Alaska Statute 25.27.170.

² Division's Pre-hearing Brief & Recording of Hearing.

³ Exhibit 3.

⁴ Exhibit 4.

order also set monthly arrears going back to July 1, 2009.⁵

Mr. W. requested a formal hearing. In his request for a formal hearing, Mr. W. protested the inclusion of his earnings from his second job in calculating his 2010 child support obligation because he currently has only one job.⁶

At the hearing, Mr. W. argued that he should not be required to pay child support because Ms. W. made him leave her home, because he does not make as much money as Ms. W., and sometimes has difficulty paying his rent.⁷

Mr. W. has a G.E D. and some college credits. Mr. W. believes that he has a learning disability because it takes him a long time to complete written tests. Since 2007, Mr. W. has worked as a school bus driver during the school year and has also worked second part-time jobs delivering fast-food. He quit his last delivery job in October of 2009. Mr. W. has been looking for another second job since he quit, and has also been looking for a summer job for when the school year ends. Mr. W. has applied for a short-term U.S. Census job, but he does not yet know if he will be hired.⁸

Based on the evidence in the record, I find that it is more likely than not that the calculations the Division used in setting child support at are correct and that the income used in these calculations is correct. Based on the evidence in the record, I also find that this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3(c). There is not clear and convincing evidence that manifest injustice will result if the child support amount calculated under Civil Rule 90.3(a) is not lowered.⁹

III. Discussion

Under Alaska Statute 25.27.140(a) the Division has the authority to establish a child support order if no support order has previously been established for the child. Under Alaska Civil Rule 90.3(a) child support is set based on a percentage of the income of the noncustodial parent. Except under unusual circumstance as discussed below, child support calculations where one parent has primary custody do not take the custodial parent's income into account.

⁵ Exhibit 6.

⁶ Exhibit 7.

⁷ Recording of Hearing.

⁸ Recording of Hearing & Exhibit 8.

In a child support hearing, the person who filed the appeal, in this case Mr. W., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁰ Mr. W. did not meet his burden to show that the Division used the wrong income information to set his ongoing child support obligation. The Division used Mr. W.'s 2009 income to calculate his ongoing child support obligation. Mr. W. did not show that his income in 2010 will probably be less than it was in 2009. Although he does not currently have a second job, he is making efforts to get one. Mr. W.'s 2009 income only included income from a second job until he quit in October of 2009.

Alaska Civil Rule 90.3 provides child support is to be calculated based on the noncustodial parent's "total income from all sources."¹¹ A child support award may be varied only "for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied."¹² Good cause includes a finding of unusual circumstances.¹³

Mr. W. did not provide clear and convincing evidence that manifest injustice will result if the child support amounts of \$454 per month based on his 2009 income and calculated under Civil Rule 90.3(a) are not decreased. In 2009, Mr. W. earned an income of \$32,937.55, including a PFD.¹⁴ Mr. W. did not present evidence that he has any unusual expenses. Mr. W. lives alone except when D. comes to visit. Mr. W. may have difficulty meeting his support obligation for D., but this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3(c).

Mr. W.'s duty to pay the correct percentage of his income toward the support of his child, D., takes precedence over his debts and other financial obligations.¹⁵ D. is now 17 years old. Mr. W. probably has only about another year in which he will be obligated to pay ongoing child support.

IV. Conclusion

Mr. W. failed to meet his burden of proof to show that his child support arrears and

⁹ Recording of Hearing & Exhibits 6, 7 & 8.

¹⁰ Alaska Regulation 15 AAC 05.030(h).

¹¹ Alaska Civil Rule 90.3(a)(1)

¹² Alaska Civil Rule 90.3(c).

¹³ Civil Rule 90.3(c)(1)(A).

¹⁴ Ex. 10.

ongoing child support should be set lower than the monthly amounts in the Division's order.

V. Child Support Order

The Division's Amended Administrative Child Support and Medical Support Order issued on February 16, 2010, is affirmed.

DATED this 16th day of April 2010.

By: Signed
Mark T. Handley
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 7th day of May, 2010

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

[This document has been modified to conform to technical standards for publication.]

¹⁵ Alaska Civil Rule 90.3 Commentary VI.B.2.